

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

AEKO KULA, INC.,

Respondent.

CASE NO. OSH 2008-12

ORDER NO. 300

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on December 2, 2008, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Sean Chu, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
 - A. Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311428643, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1910.178(n)(4) [Refer to chapter 12-73.1, HAR] was violated because:

The operator of a Yale forklift truck was not required to sound the vehicle's horn when driving forward with a load that obstructed his vision in the direction of travel toward the warehouse, thus resulting in injury to an employee who was overtaken by the truck and was caught in and dragged by the load.

- B. Whether Citation 2, Item 1, including the characterization as "Other", resulting from Inspection No. 311428643, was valid and proper.

Citation 1, Item 2 alleged:

29 CFR 1910.178(p)(1) [Refer to chapter 12-73.1, HAR] was violated because:

A Yale forklift truck was not taken out of service when it was found to be defective and in need of repair, in that the reverse alarm was not operating. The potential result of continuing to operate a truck with a defective alarm is injury such as contusions or bruises from being struck by a reversing truck due to the lack of a warning signal.

2. The deadline for filing of the parties' final naming of witnesses is **January 5, 2009**. Each party shall file with the Board the original and four copies of its list of witnesses it plans to call at trial, along with the witnesses' addresses and brief summary of expected subject of their testimony, with a certificate of service to the other party, by this date. Each party shall also exchange any expert witness reports by this date.
3. The discovery cutoff date is **February 3, 2009**. All other discovery and information requests, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **March 3 - 4, 2009 at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, December 3, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. AEKO
KULA, INC.
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EMORY J. SPRINGER, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Sean Chu, Esq.